Before the
Federal Communications Commission
Washington D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning High-Speed Access to the	)	GN Docket No. 00-185
Internet Over Cable and Other Facilities	)	
	)	
Internet Over Cable Declaratory Ruling	)	CS Docket No. 02-52
	)	
Appropriate Regulatory Treatment for Broadband	)	
Access to the Internet Over Cable Facilities	)	

REPLY COMMENTS OF THE AMERICAN FOUNDATION FOR THE BLIND

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SUMMARY

Individuals who are blind and visually impaired depend on the Internet to acquire basic communication and information that is available to other individuals through the printed word. As our population ages and the incidence of disabilities – and in particular vision disabilities – rises, a swift, "always-on" connection to the Internet through broadband services is becoming critical to maintain one's independence, fulfill civic duties, and actively contribute to society as productive participants. Opportunities for employment, online continuing education, access to health care services, and access to various forms of entertainment are rapidly making high speed access to the Internet indispensable for persons with vision and other types of disabilities.

Unfortunately, history has shown that market forces have never been enough to ensure access to communications technologies by people with disabilities. The Commission itself, in its prior reports on high speed Internet access, has acknowledged that there is "no doubt" that individuals with disabilities do not have as much access to advanced services as do able-bodied persons, and that "there is a risk that networks and services will be developed that are not accessible to people with disabilities."

Although it is readily achievable to provide many accessibility features – e.g., talking menus, text options, and keyboard equivalents for mouse commands, not all cable modem providers have made these features available. The requirement to make cable modem services accessible needs to be mandated so that such access is incorporated during the design and development of these services. It makes little sense to leave incorporation of these features up to the discretion of each broadband provider, only to

have such providers come back and assert that it is far too burdensome or expensive to retrofit for access later on.

The American Foundation for the Blind (AFB) maintains that the Commission has erroneously classified cable modem service as an information service. Where, as for IP telephony and e-mail, the functions of broadband services parallel traditional telecommunications services by delivering messages, unaltered, through a pipeline, the broadband access services supporting such functions should be classified as telecommunications services.

The failure to classify cable modem service as a telecommunications service creates a significant gap within the Commission's regulatory framework for ensuring access to future communications technologies by persons with disabilities because it pulls this service from the coverage of Section 255. This gap can be closed by extending Section 255-like protections to cable modem service via exercise of the Commission's ancillary jurisdiction under Title I. Assertion of such jurisdiction will fulfill not one, but two congressional goals – it will promote the ubiquitous availability of broadband to all Americans and it will safeguard access to communications technologies by Americans with disabilities.

As our nation's communications methods shift from legacy telephone services to high speed advanced communications services over broadband networks, it is critical that individuals who are blind and vision impaired not be left behind. AFB urges the Commission to ensure that we and other individuals with disabilities have the same opportunities to use these innovative technologies as do all other Americans.

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REPLY COMMENTS OF THE AMERICAN FOUNDATION FOR THE BLIND

I. Introduction

The American Foundation for the Blind (AFB) is a leading national resource for people who are blind or visually impaired, the organizations that serve them, and the general public. The mission of AFB is to enable people who are blind or visually impaired to achieve equality of access and opportunity that will ensure freedom of choice in their lives.

AFB submits these comments in response to the above captioned Federal Communications Commission's (FCC's) notice of proposed rulemaking (NPRM) which seeks input on the appropriate regulatory treatment for broadband access to the Internet provided over cable facilities.[1] AFB similarly submitted comments on the Commission's notice of proposed rulemaking on the classification of broadband services

[1] *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities, Declaratory Ruling and* Notice of Proposed Rulemaking (Declaratory Ruling & NPRM), GN Dkt. 00-185; CS Dkt. 02-52, FCC 02-77 (rel. Mar. 15, 2002).

provided over wireline facilities.[2] In these reply comments, AFB joins the many organizations with disabilities who have requested the Commission – in both this proceeding and its proceeding on wireline broadband services – to develop a regulatory scheme that ensures access to cable modem services – as well as access to broadband services provided over other platforms – by persons with disabilities. We note at the outset that while the Commission's NPRM on the classification of wireline broadband services contained inquiries as to how access by people with disabilities can best be achieved,[3] the Commission's instant proceeding did not seek comment on this issue. We agree with comments submitted by Telecommunications for the Deaf, Inc. (TDI) that it is somewhat troubling that the Commission has failed to acknowledge the need to consider disability access in the development of its regulatory scheme for cable modem services.[4] We urge that the Commission recognize the importance of addressing this issue as a significant factor within its cable modem regulatory framework.

II. Cable Modem Service Offers Significant Benefits to all Americans, Particularly Americans who are Blind, Visually Impaired, and Older Americans

Access to broadband services is coming to play an increasingly important role in the daily affairs of all Americans. For individuals who are blind and visually impaired, broadband service is becoming an essential gateway for access to basic communication and information. For most, the Internet offers just one option with which to acquire information; sighted individuals can acquire information through the printed word via

[2] See Comments of AFB, submitted on April 30, 2002, in response to *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations of Broadband Providers,* Notice of Proposed Rulemaking, CC Docket No. 02-33 (rel. Feb. 15, 2002) (*Wireline Broadband NPRM*).
[3] Wireline Broadband NPRM at ¶59.
[4] Comments of TDI at 2 (June 17, 2002).

faxes, snail mail, and other means. In contrast, accessing materials via the Internet is often the only means by which blind or visually impaired people can obtain information they need to fully participate in society. This access is critical if people with vision disabilities are to compete on an equal basis for employment opportunities, benefit from educational programs, make sound financial and medical decisions, fulfill civic duties, and actively contribute to society as productive participants. The digitization of information combined with assistive technologies and accessible Internet applications makes the delivery of various types of information, previously available in print formats only, readily accessible to blind users. For blind and visually impaired school children, digital talking books, soon to be widely available on Internet servers, will provide access to educational materials once only available to their nondisabled peers. Moreover, the simultaneous integration of text and audio, with the capability for Braille and large print, will soon enhance access to informational materials to an even greater extent for both children and adults who are blind or visually impaired.

In order to fully benefit from Internet applications and services, persons who have disabilities need prompt and easy access to these services. Although materials over the Internet are available through dial-up services, the cumbersome nature of these services can discourage their regular use. In this proceeding, the Commission recognizes the importance of being able to "utilize [the] more sophisticated 'real time' applications" that faster Internet transmissions have to offer.[5] Because dependence on Internet communications for access to basic materials is so much greater for blind individuals

[5] Declaratory Ruling & NPRM at ¶10. The Commission noted that in addition to significantly reducing delay associated with dial-up services, broadband services facilitate access to streaming video on a larger portion of the screen, a feature that is particularly beneficial for low vision users.

than it is for sighted persons, the need for a swift, "always-on" Internet connection is correspondingly greater for this population of users. Indeed, it is the persistence of the broadband connection that creates the most compelling need for access by blind and visually impaired persons. Unfortunately, without Commission protections, history shows that this very population – along with other individuals with disabilities – may be among those most excluded from the deployment of these advanced services.

Reliance on the Internet as an information source is exemplified by the vast number of Americans now visiting government agency web sites. According to a Report issued by Pew Internet and American Life in April of this year, as many as sixty-eight million Americans have now visited government agency web sites, up from forty million only two years ago. The Pew Report reveals that Americans are utilizing these sites to fulfill their civic, personal, and professional duties – to apply for governmental benefits, send comments to public officials, acquire information for deciding how to cast their votes, and complete basic transactions, including the filing of taxes. For individuals who are blind or visually impaired, the Internet may offer the only option of maintaining one's independence while fulfilling these civic duties.

A recent report prepared by SeniorNet also highlights significant benefits that broadband access to the Internet can offer for older Americans.[6] For example, the "always-on" connection of cable modem access offers a means by which older Americans can have a continuous connection with their families and others.[7]

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[6] Adler, Richard, "The Age Wave Meets The Technology Wave: Broadband and Older Americans," SeniorNet (2002) (SeniorNet Report).

[7] Id. at ES-1. Similarly, a new report released by the National Association of the Deaf notes that broadband's "telepresence" provides an "always-open 'window' that can end loneliness for individuals isolated for extended periods of time" The report explains that "telepresence has been defined as 'having a continuous window open into another space.'" Bowe, F., National Association of the Deaf, "Broadband

Additionally, opportunities for online continuing education, access to health care services, opportunities to enjoy on-line entertainment, and most importantly, the means by which to maintain one's independence, are all significant benefits that cable modem and other high speed access services can offer this population.[8] According to the SeniorNet report, by 2020, as many as 53 million Americans will be over 65; this number will grow to 77 million by 2040 – more than double the number of older persons living in America today.[9] Perhaps even more significant is the fact that longevity is increasing at an unparalleled rate. The study reports that over the past 40 years, the likelihood of a 65-year-old reaching age 90 has doubled to 25% and that by 2050, as many as 40% of all 65-year-old Americans are expected to survive to age 90.[10]

The SeniorNet Report notes that age brings with it an increased incidence of disabilities. The older an individual is, the more likely that individual will have some type of disability. For example, the study notes that of individuals 80 and older, nearly 75% have some disability; more than half of such individuals have a severe disability.[11] In fact, the leading causes of severe vision loss – macular degeneration, glaucoma, diabetic retinopathy and cataracts – are all age related. The benefits that cable modem service can offer these and other older Americans with disabilities will only come about if this population is able to fully access these services. It may seem easy to dismiss the needs of older Americans who, at present, may not be as reliant on Internet services as are their younger counterparts. But the senior citizens of tomorrow are the baby

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and Americans with Disabilities," (2002), www.newmillenniumresearch.org/disability.pdf (NAD Report) at 3, citing "Broadband: Bringing Home the Bits" at 19.

[8] SeniorNet Report at ES-2.

[9] Id. at 7.

[10] Id. This could mean that as many as 10 million Americans may reach the age of 90 by 2050.

[11] Id. at 8.

boomers and their children of today. It is this population that is growing up with Internet services, and it is this population that is becoming ever more dependent on the benefits that broadband access has to offer. For example, a May, 2001 media release from Mediamark Research pointed out that use of the Internet among those aged 55 to 64 grew to 43%, up from 36% six months earlier, and only 31% eighteen months before that. It is this population for whom access must be protected through regulatory measures adopted by the Commission.

III. Market Forces Cannot Guarantee Access to Cable Modem Services by People with Disabilities.

A. History Has Demonstrated the Need for Governmental Intervention to Safeguard Disability Interests.

In the instant proceeding, the Commission states that it is guided in part by the philosophy that broadband services should be allowed to flourish in a competitive free market.[12] However, market forces have never been sufficient to safeguard access for people with disabilities. Other parties to both this proceeding and the Commission's proceeding on high speed wireline Internet access have echoed this concern. For example, TDI notes that "the Commission's own regulations implementing Section 255 implicitly recognize that market forces alone are insufficient to ensure equal access to telecommunications for persons with disabilities."[13] Similarly, the Rehabilitation Engineering Research Center on Telecommunications Access (RERC-TA), in its comments, points to the extensive line of legislative and regulatory actions that have been

[12] Declaratory Ruling & NPRM at ¶¶4-6.
[13] TDI Comments at 7; See also TDI Comments on Wireline Broadband NPRM at 5 (May 3, 2002).

needed to compensate for the shortfall left by a marketplace that has historically failed the disability community.[14]

According to a recent study commissioned by the National Organization on Disability and conducted by Louis Harris, although the past five years did see an increase in Internet use among individuals with disabilities, use among this population has remained significantly lower than Internet use by non-disabled adults.[15] Specifically, whereas 56% of non-disabled adults reported using the Internet at home, the study found that the Internet was only being used by 38% of Americans with disabilities. The National Association of the Deaf report that was referenced above suggests that this discrepancy may be attributed to a number of factors, including the lower income of individuals with disabilities and accessibility concerns among this population.[16] TDI agrees; its comments state that because people with disabilities are often in the lower income brackets, they are less likely than the general population to have the financial resources to purchase computers and access to the Internet.[17] Yet, even if an individual who is blind or vision impaired had sufficient income to purchase broadband service, access defined by market affordability would not necessarily guarantee access to the actual process of signing up for the service or, once that has been accomplished, accessing the network equipment and services.

[14] Among other things, the RERC-TA notes Section 255's overall mandate for telecommunications access, as well as the Commission's decision to retain its technical criteria for hearing aid compatibility and volume control under Part 68 of the Commission's rules, as examples of occasions when both Congress and the FCC needed to intervene to preserve access by people with disabilities. RERC-TA Comments at 6-7 (June 17, 2002).
[15] NAD Report at 17.
[16] NAD Report at 19-20.
[17] Comments of TDI at 4. TDI reports that approximately 75% of people with disabilities remain unemployed.

On at least two occasions, the Commission has recognized the disparity in the use of advanced services by people with disabilities. In its *Second Report* on the deployment of advanced services, the Commission, acknowledging that individuals with disabilities can benefit from advanced services "perhaps more than any other group of Americans," stated that market forces alone may not guarantee timely access to advanced telecommunications capability for this category of Americans.[18] Citing the "[l]ack of computer ownership and training, lack of accessible content and equipment, low incomes among people with disabilities and the cost of adaptive equipment," the Commission stated that there is "no doubt" that individuals with disabilities do not have as much access to advanced services as do able-bodied persons,[19] and concluded that "there is a risk that networks and services will be developed that are not accessible to people with disabilities."[20]

The Commission's *Third Report* on the deployment of advanced services reiterates the concern that "persons with disabilit[ies] could face significant impediments to their ability to access [ ] advanced services."[21] Again, the Commission cited several relevant factors that could result in impeded access: "low rates of computer ownership among people with disabilities; prohibitive costs for computers and Internet access services; the lack of adaptive hardware, software, and Internet content; and lack of training."[22] In both the *Second* and *Third Reports*, the Commission stated its intention to continue to monitor deployment of advanced services to persons with disabilities, so that

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[18] *Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion*, Second Report, CC Dkt. No. 98-146, 15 FCC Rcd 20913 (2000) (*Second Report*) at ¶234.
[19] *Id.*
[20] *Id.* at ¶236.
[21] *Deployment of Advanced Telecommunications Capability to all Americans in a Reasonable and Timely Fashion*, CC Dkt. No. 98-146, Third Report, FCC 02-33 (2002) (Third Report) at ¶103.
[22] *Id.*

it could determine whether regulatory action was warranted to ensure access to these persons.[23] AFB submits that such regulatory action is warranted now.

B. Barriers to High Speed Internet Access Services Exist.

Significant barriers to advanced Internet services already exist for individuals who are blind or visually impaired. E-mail, web pages, and electronic services that have visual-only interfaces or graphical on-screen menus are too frequently unusable by people who have vision disabilities. When interfaces are not accompanied by text labels, they cannot be "read" by screen access software. Additionally, developers frequently fail to provide keyboard equivalents for mouse-driven commands, including buttons, scroll windows, text entry fields, and pop-up windows.

Barriers also exist with respect to the various steps one needs to take to set up cable modem service. For example, forms needed to ascertain geographical eligibility are sometimes available in a print-only format or in electronic forms that are not readable by prospective blind customers who use assistive technology. Even after eligibility is determined, a blind person may confront barriers in trying to place an order for service if the only means of placing that order is by filling out print materials or by interacting with inaccessible electronic forms. The next step – installing the broadband access 'kit" to establish the gateway – can be achieved only if the instructions and controls to secure access to the broadband gateway are available in accessible formats. Similarly, software installation often requires working through interactive menu systems, e-mail, and other communications services. Alternatives to graphic controls or bitmapped text are needed for blind users to properly make the installations. Once an Internet connection is made,

[23] Second Report at ¶8; Third Report at ¶103. In the Second Report, the Commission indicated its intent to monitor new types of equipment networks so that its accessibility rules "remain current with emergency

individuals with vision disabilities need accessible ways to interface with Internet services and content. The same lack of access to the controls that enable someone to get online can also prevent that person from accessing content.[24] Methods of providing input, of reading screens, and of learning about service and product changes and offerings must also be accessible for users to fully benefit from broadband access service.

Similarly, products that are specifically used to access IP telephony need to have controls that are accessible to blind users. At present, many of these products remain inaccessible. Blind consumers have no way of knowing on which line a call is coming, ways to program equipment, ways to set up conference or three-way calling, or ways to determine which calls are on hold. Moreover, the development of set top boxes is bringing new ways for consumers to interact with the Internet. Although accessibility engineers are working on standards to ensure that these boxes support access, unless manufacturers are required to comply with these standards, there is little chance that persons who are blind or have vision disabilities will be able to use their assistive technologies to interact with these boxes.

Some providers of cable modem service have already shown that the provision of accessible text and interfaces, the provision of codes that are compatible with assistive technology, and the provision of audio output for e-mail, web pages and other Internet services is readily achievable. Notwithstanding the fact that these accessibility features can be provided without much difficulty or expense, not all providers have made their services accessible to people with vision disabilities. The requirement to make

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technologies and do not simply react to them." Second Report at ¶267.

[24] For example, being able to select among movies or other purchases requires an accessible means of knowing what is being offered, as well as the ability to choose among those offerings. Similarly, ordering items requires an accessible means of specifying credit numbers and expiration dates.

broadband access services accessible should be mandated by the Commission; as we noted in the wireline broadband proceeding, this should not be a decision that is left up to the discretion of each broadband provider.[25] Access needs to be incorporated before products and services are developed and released – after their release it is often too burdensome or expensive to retrofit them for accessibility.

In prior proceedings, the Commission recognized the need to incorporate access during the design stages of communications development. The Commission's Order on Section 255 quotes directly from the Senate Report on this point:

> The Committee hopes that [Section 255] will foster the design, development and inclusion of new features in communications technologies that permit more ready accessibility of communications technology by individuals with disabilities. The Committee also regards this new section as preparation for the future given that a growing number of Americans have disabilities.[26]

As our nation moves to increased reliance upon Internet communications for even basic communications, the future for blind consumers looks sullen; without regulatory protections for access to broadband equipment and service gateways, we, the blind community, run the risk of being left behind. As the Internet and web-based services become replacements for today's telecommunications services and equipment, the Commission needs to fulfill its obligation to make sure that these communications services are designed to be accessible to all Americans.

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[25] AFB Comments to Wireline Broadband NPRM at 16 (April 30, 2002).

[26] *In the Matter of Implementation of Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996, Access to Telecommunications Service, Telecommunications Equipment and Customer Premises Equipment by Persons with Disabilities*, Report and Order and Further Notice of Inquiry (Section 255 Report and Order), WT Dkt. No. 96-198, FCC 99-181 (re. Sept. 29, 1999) at ¶7, citing S. Rep. No. 104-23, 104th Cong., 1st Sess. 52 (1995).

IV. The Commission Should Exercise its Authority to Preserve Cable Modem Access by People with Disabilities.

A. The Nature of Certain Cable Modem Services Constitutes the Offering of Telecommunications Services.

In its Declaratory Ruling, the Commission concludes that cable modem service is an interstate information service that does not include a separate telecommunications service offering to consumers.[27] AFB joins other parties to this proceeding who maintain that the Commission is mistaken in not classifying cable modem service as a telecommunications service, and therefore within the scope of Section 255 of the Communications Act. Section 255 requires that telecommunications services and products be accessible to people with disabilities, if readily achievable. Failure to bring cable modem services within the scope of Section 255 can create a significant gap within the Commission's own regulatory framework for ensuring access to future communications technologies by persons with disabilities.

As noted by the American Civil Liberties Union (ACLU), companies providing cable modem service are "offering their customers a 'pipe' through which their customers can express themselves and [such companies] should be viewed as classic common carriers."[28] Comments submitted by TDI in response to the Commission's proceeding on wireline broadband access mirror this view; TDI states that "the plain meaning of 'telecommunications' is the ability of two or more persons to convey information to each other across distances."[29] In the instant proceeding, TDI further argues that even if the Commission classifies cable modem service as an information service, it should consider

[27] Declaratory Ruling & NPRM at ¶ 33.
[28] Comments of ACLU at 1 (June 17, 2002).

whether this service includes a transmission component that would be subject to Title II.[30]

RERC-TA similarly notes that many of the functions of broadband service simply enable communications to take place between and among individuals and "do not generate, process or in any way transform information for its end users. . . "In [these] situation[s], the Internet is merely serving as pure transmission service or a pipeline, delivering packets of information without any processing that changes form or content between computers."[31]

AFB agrees with the above parties that several functions of cable modem service are telecommunications service functions. Specifically, IP telephony entails the carriage of telephone conversations over the Internet which, for end users is identical to the carriage of conversations via telecommunications services. When provided to the public for a fee, such offering is a telecommunications service,[32] and should be treated as such under Section 255. Similarly, e-mail communications simply entail the transport of messages between and among users without a change in the content of those messages. Functionally, e-mail is no different than POTS, and is, in fact, gradually taking the place of simple telephone calls.[33] A user wishing to send an e-mail message performs the functional equivalent of dialing a number on a telephone keypad, i.e., he or she taps an e-mail address on a computer keyboard and transmits information without changing the form or content of that information.

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[29] TDI Comments on Wireline Broadband NPRM at 7.
[30] TDI Comments at ¶7.
[31] Comments of RERC-TA at 3.
[32] 47 U.S.C. §153(46).
[33] In its Section 255 proceeding, the Commission itself suggested that e-mail can offer an alternative to telephone service for the purpose of receiving information. Section 255 Report and Order at ¶107.

In both this and its Wireline Broadband NPRM, the Commission states that the classification of a modem service should "focus[] on the nature of the service provided to consumers, rather than . . . on the technical attributes of the underlying architecture."[34] We agree with this logic but with a different result; specifically, we agree with the RERC-TA that the classification of cable modem service should turn on the functionalities of that service for its end users.[35] Where such functions parallel traditional telecommunications services, the broadband access services supporting such functions should be classified as telecommunications services. Given the functionalities of both IP telephony and e-mail, both of these services should be classified as telecommunications services, and subject to the mandates of Title II of the Communications Act. It is worth noting that the Commission adopted a similarly functional approach in its rules governing Section 255, when it concluded that an entity that provides both telecommunications and non-telecommunications services is subject to Section 255 "to the extent that it provides a telecommunications service."[36]

B. The Commission Can Exercise Ancillary Jurisdiction to Ensure Access by People with Disabilities.

Should the Commission be unwilling to classify any aspect of cable modem service as a telecommunications service, then it can nevertheless exercise its ancillary jurisdiction under Title I to trigger protections for people with disabilities similar or identical to that which the Commission has adopted under Section 255. AFB joins the chorus of parties to this proceeding who have urged the Commission to adopt Section

[34] NPRM at ¶7; Declaratory Ruling & NPRM at ¶38.
[35] Comments of RERC-TA at ¶8.
[36] Section 255 Report and Order at ¶80.

255-like provisions for cable modem and other types of high speed Internet access service.[37]

In its NPRM, the Commission asks about "explicit statutory provisions, including expressions of congressional goals" that would be furthered by the exercise of ancillary jurisdiction over cable modem service.[38] Indeed, the Commission's authority under Title I to issue rules that are designed to achieve the Commission's goals – even when those rules are not explicitly mandated by statute – is undisputed.[39] We agree with the RERC-TA that not one, but two congressional goals would be served by extending disability access protections to broadband services under Title I.[40]

First, the Commission has repeatedly noted the Legislature's intent to "encourage the ubiquitous availability of broadband to all Americans."[41] Indeed, the full benefits of broadband technology cannot be realized unless and until everyone is able to participate in its benefits. At present, there are approximately 54 million individuals with disabilities now living in the United States. Moreover, according to new statistics released by the 2000 Census, as many as one in every twelve children and teenagers are reported as

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[37] See e.g., Comments of TDI at 8 ; Comments of RERC-TA at 2-6; Reply Comments of the National Association of the Deaf at 1 (July 15, 2002); See also TDI Reply Comments to Wireline Proceeding at 3 (FCC should ensure that "services, content, and end-user equipment are accessible to and usable by people with disabilities"). Comments of Alliance for Public Technology to Wireline Broadband NPRM at 6 ("a critical component of the FCC's regulatory framework for broadband should include provisions for nondiscriminatory access by people with disabilities").

[38] Declaratory Ruling & NPRM at ¶79. In its Wireline Broadband Proceeding, the Commission similarly sought comments on the application of Section 255 under its ancillary jurisdiction. Wireline Broadband NPRM at ¶59.

[39] According to the Commission, federal courts have "long recognized the Commission's authority to promulgate regulations to effectuate the goals and accompanying provisions of the Act in the absence of explicit authority." Declaratory Ruling & NPRM at ¶75.

[40] Comments of RERC-TA at 5.

[41] Declaratory Ruling & NPRM at ¶¶4, 73; See also Wireline Broadband NPRM where the Commission noted that the "congressional policies underlying the Telecommunications Act of 1996" were intended "to ensure consumers have access to infrastructures that provide broadband capabilities." NPRM at ¶3.

having a physical or mental disability.[42] It cannot be questioned that Congress intended to include this population when it announced its intention to extend broadband access to *all* Americans.

The second congressional goal that would be served by an exercise of ancillary jurisdiction is the goal of ensuring access to communications technologies by Americans with disabilities. Over the past twenty years, Congress has passed a string of legislation to ensure that people with disabilities have access to our nation's communications technologies. The Telecommunications for the Disabled Act of 1982, the Hearing Aid Compatibility Act, the Telecommunications Enhancement Accessibility Act, Title IV of the Americans with Disabilities Act, the Decoder Circuitry Act, Sections 255 and 305 of the Telecommunications Act of 1996, and the amended Section 508 of the Rehabilitation Act substantiate the overwhelming desire of our nation's Legislature to enable people with disabilities to reap the full benefits of our nation's communications and information revolution.[43]

This would not be the first time that the Commission has exercised its authority under Title I for the purpose of safeguarding communications access by people with disabilities. Acknowledging that there had been longstanding barriers to such access in the past, the Commission, in its Section 255 proceeding, exercised ancillary jurisdiction over two information services – interactive menu services and voice mail.[44] There, the Commission found that the mere use of the term "telecommunications services" in

[42] The Washington Post at B1 (July 5, 2002).
[43] The Commission acknowledged this congressional goal in its Section 255 Order: "Understanding that communications is now an essential component of American life, Congress intended the 1996 Act to provide people with disabilities access to employment, independence, emergency services, education, and other opportunities." Section 255 Report and Order at ¶4.
[44] *Id.* at ¶98.

Section 255 did not preclude coverage of services that were not specifically telecommunications services.[45] It concluded that a failure to cover information services via its ancillary jurisdiction would undermine its implementation of Section 255 "against the backdrop of an expressed congressional policy favoring accessibility for persons with disabilities."[46]

For support in asserting its ancillary jurisdiction in the Section 255 proceeding, the Commission turned to the case of Mobile Communications Corp, a U.S. Court of Appeals decision which found that a "congressional prohibition of particular conduct may actually support the view that the administrative entity can exercise its authority to eliminate a similar danger."[47] Because Congress had made clear its intent not to discriminate against people with disabilities in the development of new telecommunications services, the Commission found sufficient authority under Section 255 to "eliminate a similar danger," i.e., the danger that people with disabilities would not be able to use certain information services.

Similarly, in the instant proceeding, failure to establish accessibility safeguards for cable modem service under Title I will undermine the Commission's overall objective as expressed in this and prior proceedings, to make communications services available and accessible to all Americans, including Americans with disabilities. If access is not safeguarded, as our nation's communications methods gradually shift from legacy

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[45] *Id.* at ¶104.

[46] *Id.* at ¶106. In its Section 255 proceeding, the Commission declined to extend the accessibility obligations to other information services because at the time it found that the information available via these services could also be retrieved through telecommunications services, by phone. As we have discussed above, in fact, electronic services may be the *only* way for blind and visually impaired persons to obtain certain types of essential information. Moreover, it may not be long before IP telephony completely takes the place of legacy telephone service.

[47] *Id.* at ¶104, citing Mobile Communications Corp. of America v. FCC, 77 F. 3d 1399, 1405 (D.C. Cir. 1996), *cert denied* Mobile Telecommunication Technologies Corp. v. FCC, 519 U.S. 823 (1996) (Mobile).

telephone services to high speed advanced communications services over broadband networks, individuals with disabilities could lose access to the communications functions to which they once had access under traditional platforms, simply because newer services which provide equivalent functions have added capabilities that go beyond traditional telecommunications services.

V. Conclusion

History has shown that without regulatory intervention, significant barriers are likely to prevent individuals with disabilities from fully benefiting from the deployment of new communications technologies such as cable modem services. Cable modem service is the most widely used broadband access service, as it is now used by approximately 68% of all residential broadband subscribers. We urge the Commission to take whatever action is needed to ensure that all Americans, including Americans with disabilities, can fully partake of the benefits offered by this advanced Internet technology.

Respectfully Submitted

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